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November 30, 2005

Secretary
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

*RE: CORRECTED COPY OF NOVEMBER 18, 2005 MOTION IN
DOCKET RM-11287 (LOW POWER AM)*

Dear FCC Commissioners and Commission,

On November 18, 2005, acting on behalf of myself, 3 other signatories of the recent Petition for a Low Power AM Radio Service and the new group RADIO READY TO GROW (RRTG), I drafted and filed a Motion In Opposition to any extension of the Docket RM-11287 comment period past November 28, 2005.

I have recently been apprised that I made a minor but consistent error when drafting this Motion. For reasons known only to my subconscious, I substituted the year "1983" in two instances where I should have written "2003".

I am now submitting a *corrected copy* of the original Motion:

In the bottom paragraph on page 5, the text now declares, accurately, that "The first Petition For Rulemaking on LPAM was filed with the Commission [by Fred C. Baumgartner, C.P.B.E., of Colorado] on June 20, 2003" [*not* 1983].

In the top paragraph on page 6, the text now declares, accurately, that the text of the Baumgartner Petition was "placed into the record of RM-10803 [now 04-233], the 'Broadcasting Localism' Docket, through Written Comments filed by Nickolaus E. Leggett N3NL and Fred Baumgartner ... on October 22, 2003" [*not* 1983].

Please accept my apologies for these inexplicable substitutions of "1983" for "2003". Perhaps my subconscious hoped that 1983 was only 2 years ago, which would make me 20 years younger.

Don Schellhardt, Esquire of Virginia, THE AMHERST ALLIANCE of Michigan, THE MICHIGAN MUSIC IS WORLD CLASS! CAMPAIGN (MMWC) and Nickolaus E. Leggett N3NL of Virginia are 4 of the 5 signatories of the August 19, 2005 Petition For Rulemaking to establish a new Low Power AM (LPAM) Radio Service.

RADIO READY TO GROW (RRTG) was formed on November 17, 2005 to represent those current and former Part 15 AM broadcasters who strongly favor the expeditious authorization and licensing of LPAM radio stations. RRTG is currently based in Washington State, where it is led by Frank Hansche, the General Manager of EAST HILL RADIO in Kent.

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This Motion Is Anticipatory

As of now -- 4:30 p.m. on November 18, 2005 -- the 5 parties to this Motion are unaware of any pending Motions for a comment period extension in FCC Docket RM-11287, *other than* THE LPAM NETWORK's October 28, 2005 Motion.

We do not oppose THE LPAM NETWORK's Motion, which asks for a comment period extension of only one week -- from Monday, November 21, 2005 to Monday, November 28, 2005.

However:

Based upon past experience, we consider it highly possible that an *additional* Motion for a *longer* comment period may be filed at the last minute. There is even precedent for the possibility that such a Motion could

be granted by the Commission before the Motion has ever been posted for public comment in this Docket.

This anticipatory Motion is designed to block, if possible, such an “end run” around an opportunity for notice and public comments on a proposed comment period extension. We urge the Commission to reject a last minute comment period extension Motion outright -- or, at the very least, to proceed with its previously scheduled activities in FCC Docket RM-11287 *until and unless* such a last minute Motion has been publicly posted, in the Electronic Comment Filing System (ECFS) Document File for RM-11287, for a period of at least 10 days.

Given the importance of timely Commission deliberations to the undersigned parties, and to those they represent, the action we request is vital for the preservation of our rights to “due process” deliberations under both the Administration Procedure Act (APA) and the United States Constitution.

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A Comment Period Extension Past November 28 Would Be Harmful

Among other negative consequences, a comment period extension past November 28 would impair the Commission’s ability to act on LPAM within the context of 3 other deliberations which are both ongoing and comprehensive:

1. The Commission's ongoing public policy deliberations in response to the massive public feedback received in its "Broadcast Localism" Docket: *RM-10803*. LPAM should be one of the FCC's regulatory responses to the general public's overwhelming call for more locally owned, locally focused radio and TV stations.

2. The Commission's ongoing public policy deliberations in response to the extensive public feedback received, on translator reform and other issues, in the recently re-opened Docket on the established Low Power FM (LPFM) Radio Service: *99-25*. There is a clear practical value in timing which permits the Commission to coordinate its regulatory reforms for LPFM stations with the initial regulatory policies for LPAM stations.

3. Current *Congressional* deliberations on possible changes to the Telecommunications Act of 1996. These deliberations in Congress, which constitute a "top to bottom" review of virtually *all* aspects of current telecommunications regulation, took 9 years to materialize -- and may take 9 years, or many more, to recur.

This is an opportunity for the Commission to work with Congress to initiate any and all Low Power Radio reforms that require, or

may require, a change in the Federal Government's statutory law.

Certainly, Congressional action is necessary before the Commission's

traditional authority to set adjacent channel spacing requirements for

LPFM stations, which a "lame duck" Session of Congress removed

in 2000, can be returned to the FCC. However, *if* the Commission

determines -- in this very Docket -- that Congressional approval

is needed before commercial-airing LPAM stations can be shielded

from the *generally applicable* statutory mandate for license auctions,

then this determination by the Commission should be made *before*

Congress concludes the process of amending the Telecommunications

Act of 1996.

A delay in the FCC's deliberations in this Docket could lead to a delay

in the Commission's determination of whether or not a statutory change

is needed before commercial LPAM stations can be exempted from

mandatory license auctions. A delay in the FCC's public declaration of that determination could in turn seriously impede future public policy advocacy by the undersigned parties, or even by the Commission itself.

That is: Uncertainty about *who has the legal power* to exempt LPAM stations from mandatory license auctions dilutes the advocacy resources of those who support reform -- since they are compelled, in the absence of a clear determination of legal authority by the Commission, to spread their advocacy efforts on auctions over *both* the Executive Branch *and* the Legislative Branch.

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Conversely, this otherwise unnecessary division of the reformers' advocacy efforts functionally confers an artificial procedural advantage upon those parties who favor *no* change at all.

**A Comment Period Extension Past November 28
Is Not Necessary For The Protection Of Any Commenter's Procedural Rights**

No party can justly claim that it has not had adequate time to consider the possibility of a new Low Power AM Radio Service. This is *particularly* true in

the case of large telecommunications institutions, such as the NATIONAL ASSOCIATION OF BROADCASTERS (NAB) or NATIONAL PUBLIC RADIO (NPR), which monitor Commission proceedings routinely and have the resources available for intensive public policy analysis and advocacy.

Potential filers of a last minute Motion to extend the RM-11287 comment period have literally had *years* to prepare for the possibility that the Commission would one day seriously consider establishment of a new LPAM Radio Service:

1. The *first* Petition For Rulemaking on LPAM was filed with the Commission on June 20, 2003. It was submitted by Fred C. Baumgartner, C.P.B.E., of Colorado. He is a nationally known broadcast engineer, with decades of experience in the field, who was (and remains) active in the national SOCIETY OF BROADCAST ENGINEERS (S.B.E.). He also was (and still is) Chairman of the Board of THE NATIONAL ANTENNA CONSORTIUM (NAC). In short: The Petition was filed more than 2 years ago, by a man with the credentials to be taken seriously on the technical issues.

2. The text of the Petition was later placed into the record of RM-10803,

the "Broadcast Localism" Docket, through Written Comments filed by Nickolaus E. Leggett N3NL and Fred Baumgartner. That filing

was made on October 22, 2003: almost exactly 2 years ago.

3. Once it had been entered into Docket RM-10803, the Baumgartner Petition went on to attract expressions of support (with some modifications) from THE LPAM TEAM: an ad hoc AMHERST ALLIANCE affiliate led by Kyle Drake of Minnesota. Generally supportive filings were also submitted in Docket RM-10803 by MMWC, Amherst, REC NETWORKS of Arizona, ALLSTON/ BRIGHTON FREE RADIO of Massachusetts and others.

Overall, Docket RM-10803 drew *almost 83,000 comments*.

Many of them came from everyday Americans who had never in their lives submitted a filing to the FCC, but felt compelled to speak out now on behalf of Broadcast Localism. If tens of thousands of everyday Americans were willing and able to express themselves in this Docket, which officially included LPAM as a

topic

during much of the comment period, it is difficult to believe that other parties -- especially large and hyper-interested

institutions

like the NAB and/or NPR -- had been "blindsided".

4. More recently, the Commission re-opened Docket 99-25 -- in order to consider translator reform and other possible changes affecting present and future Low Power Radio stations.

Since then, the re-opened Docket has attracted *roughly 12,000 comments* (for a total of roughly 16,000 comments when the 20th century filings in the Docket are counted). LPAM was offered as an important supplement to LPFM, especially in large urban areas, by a number of commenting parties -- including, among others, the separate signatories of the August 19, 2005 Petition.

Conclusion

For the reasons we have stated herein, we urge the Commission to reject *any* last minute Motion to extend the comment period, for Docket RM-11287, past November 28, 2005.

Beyond that, we urge continued movement toward the *expeditious* establishment of LPAM.

Please *keep the process moving*.

Respectfully submitted,

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